IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1555 OF 2005

Shri Narayan Shriram Mane ...Appellant
Vs.
Shri Shamrao Parsu Patil & Anr. ...Respondents

Mr N.V. Bandiwadekar for the Appellant.

Mr Amit Borkar for the Respondent No.1.

CORAM : A.S. OKA, J.
DATE : MARCH 13, 2006.

P.C.:

1. Heard Shri Bandiwadekar for the Appellant. The Appellant is the obstructionist who made obstruction Application under Order 21 Rule 97 of the Code of Civil Procedure, 1908. The Respondent No.2 is the original Plaintiff. The Respondent No.2 filed a suit for declaration against the Respondent No.1 that she has become owner of the suit property. The Respondent No.1 contested the suit by filing written statement and also filed a counter-claim for possession. Initially, the suit filed by the Respondent No.2 was decreed and counter-claim was dismissed. In Appeal preferred by the Respondent No.1, the suit filed by the Respondent No.2 was dismissed and the counter-claim was allowed and decree for possession was passed against the Respondent No.2. In the execution proceedings of the said decree passed on the counter-claim, the present Appellant obstructed.

2. Shri Bandiwadekar submitted that the obstruction of the Appellant is not entertained only on the ground of bar of res judicata. He submitted that on plain reading of section 11 of the Code of Civil Procedure, 1908, the bar of res judicata will not apply.

3. I have considered the submissions. Apart from bar of res judicata, the Trial Court has recorded a finding that the Applicant being son of the Respondent No.2 has not claimed any independent right to raise obstruction. Even according to the case of the Appellant, the property in question was owned by his father and he has a share in the property. In the counter-claim filed by the Respondent No.1, the estate of the deceased-father of the Appellant was represented by his mother. The Trial Court have recorded a finding that the Appellant was aware about the pendency of the suit filed by the Respondent No.2. The finding recorded by the Trial Court has not been disturbed by the Appellate Court. The Appellate Court has observed that the Respondent No.2 mother filed the suit on behalf of family. In view of these findings of fact, no fault can be found with the impugned judgment and decree. Appeal is, therefore, dismissed.

4. At this stage, Shri Bandiwadekar states that till today the Appellant is not dispossessed and therefore, for a period of six weeks from today, the Appellant may be protected.

5. If the Appellant is not dispossessed till today, he will not be dispossessed for a period of six weeks from today.

JUDGE